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# Terms of Service and End User License Agreement

*Last Updated: March 14, 2014*

IMPORTANT - PLEASE CAREFULLY READ THE TERMS OF THIS TERMS OF SERVICE AND END USER LICENSE AGREEMENT ("AGREEMENT"). BY ACCEPTING THIS AGREEMENT, INSTALLING OR RUNNING THE LICENSED SOFTWARE, APP, HARDWARE OR SERVICE OR USING THE LICENSED SOFTWARE, APP, HARDWARE AND/OR SERVICE, (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY, OR IF YOU HAVE NAMED A COMPANY AS CUSTOMER, ON BEHALF OF THAT COMPANY (YOU OR ANY SUCH COMPANY, THE "CUSTOMER" OR "YOU"), AND TO BIND THE CUSTOMER TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, YOU MAY NOT USE THE LICENSED SOFTWARE, APP, HARDWARE OR SERVICE.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

1. **1. AGREEMENT.** This Agreement is a legal agreement between Customer and iboss, Inc. d/b/a iboss (the "Company") and describes your rights to use the accompanying Company software product, hardware and/or service together with any associated media, printed materials and "online" or electronic documentation. Capitalized terms are generally defined in Section 27.
2. **2. LICENSES.** ways: (i) via direct download, (ii) as a hosted service, (iii) pre-installed on a server provided by the Company, or (iv) as a mobile application available for download to your mobile device. Depending on which of these methods you choose, one of the following licenses in this Section 2 will apply to you. Please read this Agreement carefully to understand which license terms apply to you. Customer acknowledges and agrees that Customer is solely responsible for reading and understanding this Agreement, and for complying with all applicable terms herein. In addition to the license which is applicable to you, by entering into this Agreement, you are also bound by and subject to Sections 1, and 3 through 29.
  1. **2.1 Software available for Download or Delivery.** Our Company enables customers to install a copy of the Licensed Software directly onto their mobile devices and

computers systems. In the event the Company has installed the Licensed Software on any Authorized Device on your behalf or has made the Licensed Software available to you for electronic download and installation directly onto Customer's mobile devices and computer systems, then the following terms apply to you:

1. **a) License by Company.** Subject to the terms and conditions of this Agreement and during the then-current term as set forth in the Order Form, Company grants to Customer a non-exclusive, non-transferable, revocable, royalty-free, limited license (without the right to sublicense) to (i) install and execute one copy of, and use the Licensed Software (in Executable Code form) on each Authorized Device and Authorized Server; (ii) access and use the Host Server; and (iii) use the Licensed Software and Service solely for Customer's internal business purposes and solely in accordance with the Acceptable Use Policy, Documentation and the limitations set forth in Sections 2.1 and 3.
  1. **i) Authorized Device Licenses.** Customer may install and use one copy of the Licensed Software on each Authorized Device. In the event Customer wishes to increase the number of Authorized Devices beyond the maximum number of Authorized Devices set forth in the Order Form, Customer shall be required to pay additional fees associated with the increased numbers of Authorized Devices.
  2. **ii) Server Licenses.** Customer may install and use one copy of the Licensed Software for each Authorized Server. In the event Customer wishes to increase the number of Authorized Servers beyond the number of Authorized Servers set forth in the Order Form, Customer shall be required to pay additional fees associated with the increased numbers of Authorized Servers.
1. **2.2 Software as a Service/Pre-Installed Server License Terms.** Our Company enables customers to use a hosted version of the Licensed Software, which is not installed onto the customer's computer systems in a manner which is commonly known as a "Software as a Service". In the event you are accessing and using the functionalities of the Licensed Software from the Company's host servers or via a server provided to you by the Company, then the following terms apply to you:
  1. **a) License by Company.** Subject to the terms and conditions of this Agreement and during the then-current term as set forth in the Order Form, Company hereby grants to Customer a nonexclusive, nontransferable, non-assignable, right and license (without the right to sublicense) to access and use: (i) the functionalities of Licensed Software provided by Company; (ii) the Host Server; (iii) any Hardware provided by the Company to Customer, if applicable; and (iv) the Licensed Software and Service for Customer's internal business purposes and solely in accordance with the Acceptable Use Policy, Documentation and limitations set forth in Section 3.
  2. **b) Additional Licenses.** Access to the Service may be used only on Authorized Devices. If Customer wishes to add additional Authorized Devices beyond the number authorized on the applicable Order Form, Customer will request such additional Authorized Devices.
1. **2.3 Mobile Application Licenses.** Our Company may offer mobile applications available

for download from an App Store (as defined below). In the event you download the App, the following terms and conditions will apply to you.

1. **a) App License.** Subject to the terms and conditions of this Agreement, Company grants you a non-exclusive, non-transferable, revocable, limited license to download, install and use a copy of the App on a single mobile device that you own or control solely for your own personal use or internal business purposes. Furthermore with respect to any App that you download through an App Store, you agree to comply with all applicable third party terms of the relevant App Store, such as the Apple App Store's "Usage Rules".
2. **b) App Stores.** You acknowledge and agree that the availability of the App is dependent on the mobile application marketplace (e.g. the Apple App Store, Google Chrome Store, or Google Play Marketplace) (each, an "App Store") from which you received the App. You acknowledge that this Agreement is between you and Company and not with the App Store. The App Store is not responsible for the App, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance, or intellectual property infringement). You agree to pay all fees charged by the App Store in connection with App (if any). You acknowledge that the App Store (and its subsidiaries) are third party beneficiaries of this Agreement and will have the right to enforce this Agreement.
3. **c) Accessing and Downloading the App from the App Stores.**
  1. **i)** You acknowledge and agree that (1) this Agreement is concluded between you and the Company only, and not the App Store and (2) the Company, not the App Store, is solely responsible for the Software and content thereof. Your use of the App must comply with the applicable App Store's terms of service governing the use of such App Store.
  2. **ii)** You acknowledge that the App Store has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
  3. **iii)** In the event of any failure of the App to conform to any applicable warranty, you may notify the applicable App Store and the App Store will refund the purchase price for the App to you. To the maximum extent permitted by applicable law, the App Store will not have any other warranty obligation whatsoever with respect to the App. As between the Company and the App Store, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of the Company.
  4. **iv)** You and the Company acknowledge that, as between the Company and the App Store, the App Store is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (1) product liability claims; (2) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
  5. **v)** You and the Company acknowledge that, in the event of any third party claim that the App or your possession and use of that App infringes that

third party's intellectual property rights, as between the Company and the App Store, the Company, not the App Store, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement.

6. **vi)** You and the Company acknowledge and agree that the App Store is a third party beneficiary of this Agreement, and has the right to enforce this Agreement as related to your license of the App against you as a third party beneficiary thereof.
7. **vii)** Without limiting any other terms of this Agreement, you must comply with all applicable third party terms of agreement when using the App.

1. **2.4 Evaluation Licenses.** If Customer is using the product for evaluation purposes, then the license granted in Section 2.1, 2.2, or 2.3 only permits Customer to use the Licensed Software, Hardware, App and/or Service, as applicable, for thirty (30) days, or such longer period set forth in the Order Form ("Evaluation Period"), for the sole purpose of evaluating the performance and functionality of the Licensed Software, Hardware, App and/or Service, as applicable ("Evaluation Software"), in accordance with the Documentation and Acceptable Use Policy. Evaluation Software may not be used in a production environment. Unless Customer has purchased a subscription to continue using the applicable Company Property, upon the expiration of the Evaluation Period, Customer must (i) discontinue using the Evaluation Software, and (ii) return the Licensed Software and Hardware, as applicable, to Company within seventy-two (72) hours. Licensed Software and/or Hardware lost, returned damaged, as determined in Company's sole discretion, or returned after thirty (30) days of the expiration of the Evaluation Period will not be accepted and Customer shall be liable to, and agrees to pay Company for the cost of replacing or fixing such Licensed Software and Hardware.

1. **2.5 License by Customer.** Subject to the terms and conditions of this Agreement, Customer hereby grants to Company an unlimited, non-transferable, royalty-free license, to use any patents or intellectual property in connection with Customer Content, including rights to reproduce, create derivative works of, publicly display, publicly perform, distribute, digitally transmit, and otherwise use the Customer Content for the purpose of providing the Service to Customer and to fulfill Company's obligations hereunder.

1. **3. RESTRICTIONS.** The rights granted to Customer in this Agreement are subject to the following restrictions: (a) Customer shall not license, sell, resell, rent, lease, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit the Company Property, or make the Company Property available to any third party; (b) Customer shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Company Property, except and only to the extent that such activity is expressly permitted by applicable law; (c) Customer shall not access the Company Property in order to build a similar or competitive product or service or extend term of the license granted hereunder; (d) except as expressly stated herein, no part of the Company Property may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted

in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording or other means; (e) Customer shall not interfere with, disrupt, alter, translate, or modify the Company Property, or create an undue burden on the Service or networks or services connected to the Service; (f) Customer shall not sublicense any of its rights under this Agreement or use or allow the use of the Company Property for rental or in the operation of a service bureau or time-sharing arrangement; (g) Customer may not, and shall not allow or assist third parties to, publish, distribute or disclose the results of any benchmark tests performed on the Company Property without Company's prior written approval, such approval to be withheld, delayed or conditioned in Company's sole discretion; and (h) use the Company Property on any mobile devices or other computers for which Customer has not received the necessary consent(s). Customer shall preserve all copyright and other proprietary rights notices in the Company Property and all copies thereof.

1. **4. CUSTOMER OBLIGATIONS.** Customer agrees to take all reasonable steps to safeguard the Company Property to ensure that no unauthorized person has access thereto and that no unauthorized copy, publication, disclosure or distribution, in whole or in part, in any form is made. Customer hereby acknowledges and agrees that the Company Property contains valuable, confidential information and trade secrets and that unauthorized use and/or copying of same would be harmful to Company. Customer hereby represents and warrants that it will comply with all laws, rules and regulations which apply to its use of the Company Property. Customer hereby further represents and warrants that the Company Property will not be used to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers, and Customer agrees to indemnify Company for any claims regarding such activities. Customer hereby acknowledges and agrees that the use of features, including, but not limited to detection, measurements and control relay (DMCR), logging, and alerts, are subject to all state, local, and federal laws and regulations applicable within the country of deployment. Customer hereby agrees to comply with all such restrictions and required disclosures and hereby agrees to hold Company harmless of any and all claims and other damages arising from Customer's failure to abide by same.
1. **5. REFURBISHED PRODUCTS.** Company will ship Hardware that have the functionality and performance of the Hardware ordered, but differences between Hardware shipped and Hardware described in a specification sheet are possible. Parts for Hardware may be new or refurbished. Spare parts also may be new or refurbished. System capacities specifications may vary based on Customer configuration options or Internet usage conditions and are subject to change without notice.
1. **6. SUPPORT.** Subject to the terms of this Agreement and payment of applicable fees, Company will provide support services to Customer in accordance with the Service Level Agreement, as may be amended by the Company from time to time. For end-user Customers, Company, or any third-party support provider hired by Company, will attempt to handle any problem involving Company's the Licensed Software, App, Hardware or Service over the telephone or via email. However, Customer hereby acknowledges and agrees that Company support personnel/providers may not be able to understand or resolve any given problem. Service offerings may vary from product to product. If Customer purchased optional services and support, Company will provide the optional service and support to

Customer in accordance with its then-current terms and conditions.

1. **7. UPDATES.** Company's policy is one of on-going product update and revision. Company may revise, update, upgrade or discontinue Licensed Software, App, Hardware or Service at any time, without prior notice to Customers. During the Term, Company may, in its sole discretion, provide Customer with updates or upgrades. Company and its suppliers are not obligated to provide any updates or upgrades to the Licensed Software, App, Hardware or Service. Any future release, update, or other addition to functionality of the Licensed Software, App, Hardware or Service shall be subject to the terms of this Agreement, unless Company expressly states otherwise.
1. **8. RETURN POLICIES.** The Company does not accept returns on any Company Property.
1. **9. EXCHANGES.** From time to time, Company may, in its sole discretion, exchange Hardware or portions of Hardware for a Customer. Any exchanges will be made in accordance with Company's exchange policies in effect on the date of the exchange.
1. **10. SUBSCRIPTION FEES AND PAYMENT.**
  1. **10.1 Fees.** In consideration for the access rights and licenses granted to Customer and the services performed by Company under this Agreement, Customer will pay to Company all fees to Customer's account as required by a particular Order Form. Company will automatically renew and bill Customer's credit card periodically in accordance with the Order Form. If Customer provides credit card information to Company, Customer authorizes Company to charge such credit card for all services listed for the initial subscription term, and any renewal subscription term(s), and any recurring fees and charges set forth therein. In the event that Customer wishes to increase the number of Authorized Devices or Authorized Servers beyond the maximum number of Authorized Devices or Authorized Servers for which fees have been paid, Customer shall be required to pay additional fees associated with the increased number of Authorized Devices or Authorized Servers, prorated for the remainder of the term.
  2. **10.2 Payment Terms.** All payment obligations are non-cancellable and all amounts paid are non-refundable. All payments are due from Customer net thirty (n/30) days from the date of Company's invoice. Past due invoices are subject to a monthly charge equal to the lesser of: (a) one and one-half percent (1.5%) per month; or (b) the highest rate of interest permitted by applicable law. If any invoice remains unpaid after sixty (60) days from the invoice date, notwithstanding any agreement or course of dealing between Company and Customer, (i) all subsequent orders will be accepted only on a C.O.D. or cash-with-order basis until satisfactory credit is reestablished (in Company's sole discretion), and (ii) Company may suspend Customer's access to and use of the Company Property until all outstanding invoices are paid. Customer may upgrade the Hardware model or subscriptions service within sixty (60) days of the purchase date and receive a full credit for the original purchase, provided the original unit is returned to Company within thirty (30) days of the upgrade. Delinquent amounts owed by Customer may be referred to a collection agency, and will be subject to additional fees.

1. **11. PRICES AND TAXES.** Unless otherwise stated in writing by Company, (a) all prices appearing in a written Order Form will expire in accordance with the terms of same, and (b) all such prices are exclusive of transportation, insurance, federal, state, local, excise, value-added, use, sales, property (ad valorem) and similar taxes or duties now in force or hereafter enacted. Customer agrees to pay the Company invoice for all purchases made pursuant to the Order Form. Customer will pay all taxes, fees or charges of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between Customer and Company. If Company is required to collect any of the foregoing, such amounts will be separately stated on the invoice, and must be paid by Customer unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer agrees to provide Company with a valid resale certificate for any Licensed Software or Hardware purchased for resale.
1. **12. SHIPMENT/DELIVERY.** In the absence of specific shipping instructions, Company will ship Licensed Software or Hardware by the method it deems most advantageous, using standard commercial packaging. Customer agrees to pay all transportation charges and costs associated with shipment of the Licensed Software or Hardware, including any special or export packaging requested or required under the circumstances, as determined by Company. Customer is also responsible for obtaining insurance against damage to the Licensed Software or Hardware during shipment. Title and risk of loss for the Licensed Software or Hardware shipped shall pass to Customer at the time the Licensed Software or Hardware is picked up at the delivery location.
1. **13. OWNERSHIP.** All right, title, and interest, including all Intellectual Property Rights, in and to the Licensed Software (including any and all copies thereof), App, Hardware and Service shall be owned and retained by Company or its suppliers. Any rights not expressly granted by Company in the Agreement are reserved. Customer acknowledges that it acquires no ownership interest in the Licensed Software, App, Hardware or Service. Company acknowledges and agrees that Customer is the sole and exclusive owner of all Customer Content. Any third party software included in the Licensed Software, App, Hardware or Service may only be used in conjunction with such product or service, and is not licensed for use independent from such product or service.
1. **14. CUSTOMER MARKS.** Customer hereby grants Company permission to use Customer's logo and trademarks on Company's website, or any other marketing material, when referring to Customer. Customer will retain all title and rights to such logos and trademarks.
1. **15. OPEN SOURCE SOFTWARE.** Certain items of software may be provided to Customer with the Licensed Software or App and are subject to "open source" or "free software" licenses ("Open Source Software"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Section 2. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Company makes such Open Source Software, and Company's modifications to that Open Source Software, available by written request at the

notice address specified below.

1. **16. LIMITED WARRANTY.**

1. **16.1 General.** During the Term, Company warrants to Customer that Company will use commercially reasonable efforts to remedy any Error that Customer notifies Company of in writing. If Customer notifies Company of any breach of the foregoing warranty, Company shall, as Customer's sole and exclusive remedy, (a) provide the support services described in the Service Level Agreement, or (b) provide Customer with a pro-rated refund of fees paid for the period of time when the Licensed Software, Service, Hardware, or App, as applicable, was impaired by such Error. Notwithstanding the previous sentence, Company does not warrant that: (i) the Company Property will be free from defects or that defects will be corrected; (ii) the Company Property will satisfy all of Customer's requirements; (iii) the Company Property will operate without interruption or error; (iv) the Company Property will always locate or block access to or transmission of all desired addresses, applications and/or files; (v) the Company Property will identify every transmission or file that should potentially be located or blocked; (vi) addresses and files contained in the the Company Property will be appropriately categorized; (vii) algorithms used in the the Company Property will be complete or accurate; or (viii) the Company Property are free of viruses or other harmful components.
2. **16.2 Hardware.** Notwithstanding anything to the contrary herein, Customer's sole and exclusive remedy for any breach of the warranty set forth in Section 16.1 as it relates to Hardware shall be the repair or replacement of such Hardware, as determined by Company in its sole discretion. Hardware replaced under warranty or advanced exchange requires replaced/failed equipment to be returned within seventy-two (72) hours of receipt of new equipment. Replaced/failed equipment returned after thirty (30) days of receipt of replacement will not be accepted and replaced/failed equipment will be billed. This paragraph sets forth Customer's sole and exclusive remedy and Company's entire liability for any breach of warranty or other duty related to the Products.
3. **16.3 Unauthorized modification.** Any unauthorized modification, tampering, or use of the Licensed Software, App, Hardware or Service inconsistent with the Documentation, or related breach of this Agreement shall void the warranties set forth in this Section.

1. **17. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, THE LICENSED SOFTWARE, APP, HARDWARE AND SERVICE IS PROVIDED TO CUSTOMER ON AN "AS-IS" BASIS. ADDITIONALLY, NO WARRANTIES WILL BE EFFECTIVE, AND COMPANY WILL NOT BE OBLIGATED TO HONOR ANY WARRANTIES, UNLESS AND UNTIL COMPANY RECEIVES PAYMENT IN FULL FOR THE APPLICABLE LICENSED SOFTWARE, HARDWARE, APP OR SERVICE. COMPANY AND ITS SUPPLIERS DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES RELATING TO THE LICENSED SOFTWARE, APP, HARDWARE AND SERVICE, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. COMPANY DOES NOT REPRESENT OR WARRANT THAT THE LICENSED SOFTWARE, APP, HARDWARE OR SERVICE OR ANY NETWORKS OR SYSTEMS PROTECTED BY SUCH PRODUCTS WILL BE FREE FROM VULNERABILITY, INTRUSION, ATTACK, OR OTHER DAMAGE.



1. **18. LIMITATION OF REMEDIES AND DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE RESPONSIBLE OR LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUES AND LOSS OF PROFITS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CAUSE WHATSOEVER HEREUNDER SHALL NOT EXCEED THE GREATER OF FIFTY DOLLARS (\$50.00) OR THE AMOUNT PAID BY CUSTOMER FOR THE LICENSED SOFTWARE, APP, HARDWARE AND/OR SERVICE DURING THE 12 MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH CUSTOMER ALLEGES THE EVENTS THAT CAUSED SUCH DAMAGE OCCURRED. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PERMIT LIMITATIONS OF LIABILITY TO APPLY TO CONSUMERS, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER.
1. **19. BASIS OF BARGAIN.** The warranty disclaimer and limitation of liability set forth above are fundamental elements of the basis of the agreement between Company and Customer. Company would not be able to provide the Licensed Software on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Company's suppliers.
1. **20. TERM AND TERMINATION.** Unless otherwise stated in the applicable Order Form, this Agreement and the licenses granted hereunder are effective upon the earlier of the date Customer downloads the Licensed Software or App, first uses the Hardware or Service or accepts this Agreement, and shall continue unless and until this Agreement is terminated by either party pursuant to this Section (the "Term"). Company may terminate this Agreement immediately upon notice to Customer in the event that Customer materially breaches any of the terms hereof, including any breach by Customer of its payment obligations. Company may immediately terminate this Agreement and the license granted to Customer hereunder if: (a) the Licensed Software, Hardware, Service or App has been altered by or on behalf of Customer, (b) the Licensed Software or App has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Company, or (c) the Hardware has not been operated, repaired or maintained in accordance with instructions supplied by Company. Customer may terminate its account at any time. Company is not responsible or liable for any records or information that is made unavailable to Customer as a result of Customer's termination of its account. CUSTOMER AGREES THAT COMPANY WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY TERMINATION OF CUSTOMER'S ACCESS TO THE LICENSED SOFTWARE, APP OR SERVICE. Upon termination, the license(s) granted hereunder shall terminate and Customer shall immediately cease all use of the Service and destroy any copies of the Licensed Software or App in its possession, if any. Notwithstanding any termination of this Agreement, Sections 3 through 29 will remain in effect.
1. **21. EXPORT.** The Company Property and related technology, including technical data, are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other

countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import the Company Property. Customer agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations. Company provides multiple versions of the Licensed Software and App targeted for specific geographic regions. The North American version is designed to operate only in North America and may not include all of the features or regulatory approvals for providing protections in other regions. The subscription update service may not function properly if a North America version is exported and Company will be unable to support such exported versions. Any upgrade to an international version will be at Company's sole discretion and subject to additional fees. Customer will indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by Customer of its obligations under this Section. Customer will indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by Customer of its obligations under this Section 21.

1. **22. DISPUTE RESOLUTION.** Excluding any claims arising from or related to the infringement or misappropriation of Company Property, the parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against Company, its agents, employees, successors, assigns or affiliates (collectively for purposes of this paragraph, "Company") arising out of or relating to this Agreement, Company advertising, or any related purchase of a Licensed Software, App, Hardware or Service (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time period after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration ("Arbitration"). The arbitration hearing shall take place in Customer's choice of San Diego, California, Denver, Colorado, or Wilmington, Delaware. There is no judge or jury in arbitration. Arbitration procedures are simpler and more limited than rules applicable in court and review by a court is limited. YOU AND COMPANY AGREE THAT ANY SUCH ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. Notwithstanding any provision in these Terms to the contrary, if the class-action waiver in the prior sentence is deemed invalid or unenforceable, however, neither you nor we are entitled to arbitration. This arbitration agreement is subject to the Federal Arbitration Act. The arbitrator's award may be entered in any court of competent jurisdiction. Notwithstanding any provision in these Terms to the contrary, we agree that if Company makes any future material change to this dispute resolution provision, it will not apply to any individual claim(s) that you had already provided notice of Company. The existence or results of any negotiation, mediation or arbitration will be treated as confidential.

This Agreement is governed by the laws of the State of California without regard to conflict

of law principles. If the arbitration in this section provision is found unenforceable or not to apply for a given dispute, then the proceeding must be brought exclusively in a court of competent jurisdiction in San Diego County, California.

1. **23. HEADINGS.** The section headings used herein are for convenience of reference only and do not form a part of these Terms. No construction or inference shall be derived therefrom.
1. **24. WAIVER.** The failure of Company to enforce at any time or for any period of time the terms of this Agreement shall not be construed as a waiver of same or the rights of Company thereafter to enforce same.
1. **25. AMENDMENT.** This Agreement shall NOT be altered, supplemented, amended or otherwise modified by the use of any other document(s) (e.g., an Order Form). Any attempt to alter, supplement amend or otherwise modify the Agreement or to enter an order that purports to be subject to additional or modified terms and conditions will be null and void, unless otherwise agreed to in a written agreement signed by both Customer and Company.
1. **26. SEVERABILITY.** If any term or condition of this Agreement is held void or unenforceable, it shall be severed, and every other provision shall be enforced as if the void or unenforceable term or condition had never been a part hereof.
1. **27. DEFINITIONS.** The following terms will have the meaning set forth below:
  2. "Acceptable Use Policy" means the Company's general rules and regulations governing Customer's and each end-user's use of the Company Property.
  3. "App" means any mobile software application offered by Company.
  4. "Authorized Device" means any mobile device, computer, or computer system of Customer as may be authorized by an Order Form to use the Licensed Software in accordance with the terms of this Agreement.
  5. "Authorized Server" means a virtual or physical machine with a server operating system such as Microsoft Windows Server 2003, 2008, 2012 or any version or type of Linux operating system of Customer as may be authorized by an Order Form to execute the Licensed Software in accordance with the terms of this Agreement.
  6. "Company Property" means the Licensed Software, Host Server, Hardware and Service.
  7. "Customer Content" means any information and other content uploaded by Customer to the Service.
  8. "Documentation" means the end user manuals provided to Customer along with the Licensed Software.
  9. "Error" means a reproducible error of the Licensed Software, App, Hardware and/or Service, as applicable, to substantially conform to the Documentation in all material respects.
  10. "Executable Code" means the fully compiled binary version of a software program that can be executed by a computer and used by an end user without further compilation.
  11. "Hardware" means any physically tangible electro-mechanical system or sub-system and any related equipment provided by the Company to Customer.
  12. "Host Server" means the server(s) on which Company has installed the Licensed Software and/or necessary components and services for utilizing Licensed Software or App for Customer's use.
  13. "Intellectual Property Rights" means all copyrights, trade secrets, patents, patent

applications, moral rights, contract rights and other proprietary rights.

14. "Licensed Software" means the software program or programs described in the Order Form, and any modified, updated, or enhanced versions of such programs that Company may provide to Customer pursuant to this Agreement, or a separate maintenance and support agreement.
15. "Order Form" means the written or electronic form evidencing the initial license for the Licensed Software and/or the Service and any subsequent order forms executed between the parties electronically or in writing.
16. "Service" means the services ordered by Customer through an Order Form
17. "Source Code" means the human-readable version of a software program that can be compiled into Executable Code.

1. **28. QUESTIONS OR ADDITIONAL INFORMATION.** If you have questions regarding this Agreement, or wish to obtain additional information, please send an e-mail to [support@iboss.com](mailto:support@iboss.com)(mailto:support@iboss.com) or write to us at 9950 Summers Ridge Road, Suite 160, San Diego, CA 92121 or any new address indicated on website [www.iboss.com](http://www.iboss.com).

1. **29. CHANGES TO THIS AGREEMENT.** From time to time, Company may revise this Agreement. To help you stay current of any changes, Company notes the date this Agreement was last updated below. Your use of the Company Property following the posting of any revised Agreement shall be deemed acceptance of the revised Agreement. Company strongly recommends checking this Agreement periodically.

If you disagree with the provisions of this Agreement at any time, your sole remedy is to terminate your use of the Service and inform us of such termination as described in this Agreement. Continued use of the Company Property constitutes your agreement to the Agreement as in effect.

 [Download as PDF\(http://www.iboss.com/termsfuse/iboss-Terms\\_of\\_Use\\_and\\_End\\_User\\_License\\_Agreement.pdf\)](http://www.iboss.com/termsfuse/iboss-Terms_of_Use_and_End_User_License_Agreement.pdf)

## The iboss Story

[About Us\(/about-us\)](#)

[Leadership\(/leadership\)](#)

[Board\(/board-of-directors\)](#)

[Blog\(/blog.iboss.com\)](#)

[In the News\(/in-the-news\)](#)

[Press Releases\(/press-releases\)](#)

## Legal

[Privacy Policy\(/privacy-policy\)](/privacy-policy)

[Terms of Use\(/terms-of-use\)](/terms-of-use)

[Acceptable Use Policy\(/acceptable-use-policy\)](/acceptable-use-policy)

## Site Map

[Site Map\(/site-map\)](/site-map)

## Learn iboss

[iboss University Overview\(/iboss-university\)](/iboss-university)

[ISCP Certification\(/www.iboss.com/iuniversity-iscp\)](//www.iboss.com/iuniversity-iscp)

[Expand Your Knowledge\(/www.iboss.com/iuniversity-eyk\)](//www.iboss.com/iuniversity-eyk)

## Contact Support


[Support Overview\(/support\)](/support)

[Open a Ticket\(http://support.iboss.com\)](http://support.iboss.com)


[Activate iboss Pro\(/www.iboss.com/phantomweb/action/activation/selectProduct?b=1\)](//www.iboss.com/phantomweb/action/activation/selectProduct?b=1)

[Cloud Management\(/www.iboss.com/phantomweb/action/enterprisemanagement/login\)](//www.iboss.com/phantomweb/action/enterprisemanagement/login)

North America:

 877-742-6832 X3

International:

 858-568-7051 X3


## Contact Sales

[Request Demo\(/www.iboss.com/demo-request\)](//www.iboss.com/demo-request)

[Request Evaluation\(/www.iboss.com/eval-request\)](//www.iboss.com/eval-request)

[Request Information\(/www.iboss.com/info-request\)](//www.iboss.com/info-request)


North America:

 877-742-6832 X1

Contact local distributor or:

 [sales@iboss.com\(mailto:sales@iboss.com\)](mailto:sales@iboss.com)

International:

 858-568-7051 X1

Contact local distributor or:

 [sales@iboss.com\(mailto:sales@iboss.com\)](mailto:sales@iboss.com)

EMEIA:

 +44 (0) 203 713 0471

Contact local distributor or:

 [emeia@iboss.com\(mailto:emeia@iboss.com\)](mailto:emeia@iboss.com)

